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ABSTRACT

Teachers with tenure possess certain privileges. For instance, they are permitted a hearing before the school board when they are threatened with dismissal. The failure of tenured teachers to maintain standards must be proved by the administration. In the case of probationary teachers, the school board has almost unlimited power to renew or not to renew contracts. When dismissal is a matter of financial cutbacks, school boards have more freedom. For example, tenured teachers may be let go if a plethora of instructors teach the same subject, while probationary teachers may be retained if there are few instructors teaching their subject. To maintain an effective tenure policy, administrators and school boards should establish definite standards for probationary teachers; administrators should present a tenured teacher's failings to the school board; and, finally, the school board, teachers, and administrators need to deal fairly with reductions in force. (RG)

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TEACHER TENURE

Is tenure an outmoded concept that stands in the way of sound educational policy? Or is tenure an essential means of protecting teachers from arbitrary and capricious actions on the part of administrators and school boards? Although their opinions may differ, it is essential that all the parties involved--parents, teachers, administrators, and school boards--gain a clear understanding of what tenure does and does not do. They may then use that understanding to ensure that competent teachers enjoy academic freedom while administrators preserve the flexibility they need to develop and maintain quality educational systems.

What is tenure?

Tenure is a form of job security for teachers who have successfully completed a probationary period. Its primary purpose is to protect competent teachers from arbitrary nonrenewal of contract for reasons unrelated to the educational process--personal beliefs, personality conflicts with administrators or school board members, and the like.

What protection does tenure offer the public school teacher?

The type and amount of protection vary from state to state and--depending on agreements with teachers' unions--may even vary from school district to school district. In general, a tenured teacher is entitled to due process when he or she is threatened with dismissal or nonrenewal of contract for cause: that is, for failure to maintain some clearly defined standard that serves an educational purpose.

In such cases, due process usually requires that the school board hold a hearing at which the administration presents its arguments in favor of dismissing the teacher or not renewing the teacher's contract, and the teacher is allowed to present his or her side. As in a criminal court, the teacher is presumed innocent until proven guilty: the administration must prove that the teacher has failed to measure up to some clearly defined standard; the teacher need not prove that he or she has measured up to it.

It is not impossible to terminate the employment of a tenured teacher, but the process is a difficult and cumbersome one. Consequently, many parents arrive at the conclusion that administrators would rather retain incompetent teachers than go through the time and effort involved in a dismissal hearing.

What are the rights of a probationary teacher?

When deciding whether to renew the contract of a probationary teacher (a teacher who does not yet have tenure), a school board's powers are almost unlimited. In most such instances, the situation of the probationary teacher up for renewal is virtually the reverse of the situation of the tenured teacher. The burden of proof is on the teacher to establish that the board is acting in an arbitrary or capricious manner, has failed to live up to its side of a contract, or has violated the teacher's constitutional rights. In addition, the courts have traditionally been extremely reluctant to intervene when a school board has chosen not to renew the contract of a probationary teacher.

In at least some instances, the courts have ruled that a school board need not retain a probationary teacher even when it is established that the teacher is doing an adequate job. In such instances, the courts have ruled that if a school board believes it can replace an adequate probationary teacher with a better one, it is at liberty to do so.

Despite the wide latitude given to school boards, it is only common sense that the board make sure its actions do not conflict with any agreement between the board and the teachers' union.

How much leeway do school boards have when laying off faculty because of declining enrollments or financial cutbacks?

School boards have much more leeway when deciding whom to lay off because of financial exigencies than they have when deciding whether to renew the contract of a tenured teacher. The exact amount of leeway, however, is

determined in large part by agreements between the school board and the teachers' union.

Generally speaking, tenured faculty have preference over probationary faculty, but such preference is seldom absolute. If a tenured faculty member and a probationary faculty member teach exactly the same subjects, then the tenured faculty member must usually be given preference. However, if there is a surplus of teachers in one discipline and a scarcity in another, a tenured faculty member in the one might be let go and a probationary faculty member in the other might be retained.

The school board is usually required to make a good faith effort to find an alternative position for a tenured teacher whose position is eliminated. But the school board does not necessarily need to bump a probationary teacher to make room for a tenured teacher with the credentials to hold the latter's position. If the school board has sound reason to believe that the probationary teacher is better qualified to hold the position, the school board is probably on safe ground in retaining the probationary teacher and not renewing the contract of the tenured teacher.

It should be emphasized that a considerable amount of conflict and misunderstanding can be avoided if the school board, administrators, and teachers work together to develop a reasonable plan for dealing with reductions in force before such reductions become necessary.

What are the key elements of a sound tenure policy?

Whatever its alleged drawbacks, tenure has been integral to the public school system for many years and is likely to remain so for many more. To operate an effective school system while remaining within the spirit of tenure agreements, school boards and administrators are advised to do the following:

1. Establish clearly defined standards for probationary teachers and monitor those teachers carefully. If the teachers fail to maintain those standards and remediation does not work, the teachers in question should be released before they acquire tenure.

2. If a tenured teacher fails to maintain the necessary standards, and remediation does not work, then administrators should scrupulously follow due process in presenting their case before the school board. This includes carefully documenting any charges brought against the teacher.

3. When a school district is faced with reductions in force due to financial problems or declining enrollment, the school board, administrators, and teachers should work together to devise a means of dealing with the problem that is fair to everybody--administrators, teachers, and especially students.

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